

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 559

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO PRESCRIPTIVE OVERFLOW EASEMENTS; AMENDING SECTION 5-246, IDAHO CODE, TO PROVIDE THAT SPECIFIED PROVISIONS RELATING TO PRESCRIPTIVE OVERFLOW EASEMENTS SHALL NOT BE CONSTRUED TO RESTRICT ANY USE OF THE UNDERLYING PROPERTY FOR ANY PURPOSE OTHERWISE CONSISTENT WITH OWNERSHIP EVEN IF THE USE REASONABLY INTERFERES WITH THE STORAGE OF WATER ON THE PROPERTY AND TO CLARIFY THAT THE USE SHALL NOT UNREASONABLY INTERFERE WITH THE STORAGE OF WATER ON THE PROPERTY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 5-246, Idaho Code, be, and the same is hereby amended to read as follows:

5-246. PRESCRIPTIVE OVERFLOW EASEMENTS. In conformity with the limitations of actions time period set forth in sections 5-203 through 5-206, Idaho Code, the owner of a dam shall be deemed to have obtained a nonexclusive prescriptive overflow easement over real property which has been inundated or overflowed by the operations of the dam for at least a part of a year for any consecutive five (5) year period prior to commencement of an action by the property owner seeking relief inconsistent with such nonexclusive prescriptive overflow easement. Said dam owner shall be deemed to have not forfeited said nonexclusive prescriptive overflow easement if the reason for the failure to exercise the easement is a lack of water caused by drought or acts of God.

It is further provided that if a dam has inundated or overflowed real property for at least a part of a year for the five (5) consecutive years prior to the enactment of this section, then the owner of the dam shall be deemed to have obtained a nonexclusive prescriptive overflow easement hereunder over said real property one (1) year after the enactment of this section, provided, no action seeking relief inconsistent with such nonexclusive prescriptive overflow easement has been commenced by the property owner within one (1) year of the enactment of this section. The provisions of this section shall not be construed to affect the riparian and littoral rights of property owners to have access to and use of waters in this state, or to restrict any use of the underlying property for any purpose otherwise consistent with ownership thereof, even if said use reasonably interferes with the storage of water on the property, but said use shall not unreasonably interfere with the storage of water on the property. Nothing herein shall be deemed to affect any prescriptive overflow easement that any dam owner may have previously acquired under common law. The provisions of this section shall not be construed to apply to the beds of navigable waters lying below the natural or ordinary high watermark as defined in subsection (c) of section 58-1302, Idaho Code, and subsection (9) of section 58-104, Idaho Code, or any other lands owned by the state of Idaho.